

District courts have jurisdiction to entertain petitions for habeas relief only from persons who are “*in custody* in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3) (emphasis added). The custody requirement is fulfilled when a petitioner is in custody “under the conviction or sentence under attack at the time his petition is filed.” Maleng v. Cook, 490 U.S. 488, 490-91 (1989). Where, as is the case here, the sentence under attack has fully expired, the custody requirement is not met. *Id.* As a result, the Court does not have jurisdiction over the

petition, and the Court will dismiss it. See Fed. R. Civ. P. 12(h)(3); Rule 4 of the Rules Governing § 2254 Cases.

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion to proceed in forma pauperis is **GRANTED**.

IT IS FURTHER ORDERED that petitioner's petition for habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED**.

An Order of Dismissal will be filed with this Memorandum and Order.

So Ordered this 19th day of October, 2010.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written in a cursive style.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE